

LEGISLATURE OF THE STATE OF IDAHO
Fifty-ninth Legislature First Regular Session - 2007

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO.

BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

AN ACT

RELATING TO UNDERGROUND STORAGE TANKS; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 88, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO STATE LEGISLATIVE FINDINGS AND PURPOSE, TO DEFINE TERMS, TO ESTABLISH THE PROGRAM SCOPE, TO PROVIDE UNDERGROUND STORAGE TANK DESIGN, CONSTRUCTION, INSTALLATION AND NOTIFICATION REQUIREMENTS, TO PROVIDE GENERAL OPERATING REQUIREMENTS, TO PROVIDE RELEASE DETECTION REQUIREMENTS, TO PROVIDE FOR PUBLIC PARTICIPATION RELATING TO RELEASES FROM UNDERGROUND STORAGE TANKS, TO PROVIDE OUT-OF-SERVICE AND CLOSURE REQUIREMENTS, TO PROVIDE FINANCIAL RESPONSIBILITY REQUIREMENTS, TO PROVIDE LENDER LIABILITY PROTECTIONS, TO PROVIDE ADDITIONAL NOTIFICATION REQUIREMENTS, TO PROVIDE ADDITIONAL MEASURES TO PROTECT GROUND WATER FROM CONTAMINATION, TO PROVIDE OPERATOR TRAINING REQUIREMENTS, TO PROVIDE DELIVERY PROHIBITION REQUIREMENTS, TO PROVIDE INSPECTION, MONITORING, TESTING, AND CORRECTIVE ACTION REQUIREMENTS, TO PROVIDE AUTHORITY FOR ENFORCEMENT OF THIS ACT.

Be it Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 88, Title 39, Idaho Code, and to read as follows:

CHAPTER 88

IDAHO UNDERGROUND STORAGE TANK ACT

39-8801. SHORT TITLE. This act may be known and cited as the "Idaho Underground Storage Tank Act."

39-8802. LEGISLATIVE FINDINGS AND PURPOSES.

(1) The legislature of the state of Idaho finds:

- 1 (a) That adverse public health and environmental impacts can result from leaking
2 underground storage tanks and that leaking underground storage tanks are a
3 matter of statewide concern; and
4 (b) That subchapter IX of the Solid Waste Disposal Act (SWDA) (42 U.S.C. 6991, et
5 seq. (2000)), as amended by the Underground Storage Tank Compliance Act,
6 Pub.L. 109-58, title XV, Aug. 8, 2005, and regulations adopted pursuant thereto,
7 establish federal law regulating underground storage tanks; and
8 (c) That section 9004(a) of the SWDA (42 U.S.C. 6991c(a)) and 40 CFR part 281
9 provide for the delegation to states the authority to implement the federal laws
10 regulating underground storage tanks; and
11 (d) That while the federal laws regulating underground storage tanks are currently
12 administered by the United States Environmental Protection Agency, it is in the
13 best interest of the state to administer the underground storage tank laws from
14 both an efficiency and effectiveness perspective.
15 (2) Therefore, it is the intent of the legislature to establish a state underground storage
16 tank program which complies with the requirements of section 9004(a) of the SWDA
17 (42 U.S.C. 6991c(a)) and 40 CFR part 281 such that the state of Idaho may have
18 primacy over underground storage tanks in Idaho.
19

20 **39-8803. DEFINITIONS.** As used in this chapter:

- 21 (1) "Administrator" means the director of the Idaho department of environmental quality
22 except as otherwise provided below.
23 (2) "Department" means the Idaho department of environmental quality.
24 (3) "Director" means the director of the Idaho department of environmental quality or the
25 director's authorized agent.
26 (4) "Implementing Agency" means the Idaho department of environmental quality
27 except as otherwise provided below.
28

29 **39-8804. PROGRAM SCOPE.** 40 CFR part 280, subpart A is herein incorporated by
30 reference as provided in 40 CFR, revised as of July 1, 2006, including any notes therein,
31 except as provided below. The definitions in 40 CFR 280.12 shall apply to this chapter
32 only.

- 33 (1) Reference to "this part" in sections 280.10(a) and 280.10(b) is replaced with "the
34 Idaho Underground Storage Tank Act."
35 (2) Reference to "Subparts B, C, D, E and G" in section 280.10(c) is replaced with
36 "Subparts B, C, D, G and IDAPA 58.01.02.851."
37 (3) Reference to "December 22, 1988" and "November 8, 1984" in section 280.12 are
38 replaced with "July 1, 2007."
39

40 **39-8805. UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION AND**
41 **NOTIFICATION.** 40 CFR part 280, subpart B, except section 280.22(b), is herein
42 incorporated by reference as provided in 40 CFR, revised as of July 1, 2006, including
43 any notes and appendix III therein, except as provided below.

- 44 (1) Section 280.20(e) is replaced with "(e) Certification of installation. All owners and
45 operators of new or replacement underground storage tanks or piping systems must
46 ensure that one of the following methods of certification is used to demonstrate

1 compliance with section 280.20(d): (a) The installation has been inspected and
2 certified by a licensed professional engineer with education and experience in
3 underground storage tank system installation; or (b) The installer is certified or
4 licensed in another state to conduct UST installations. Owner and operators shall
5 submit a certification of compliance on the UST notification form provided by the
6 department of environmental quality.”

7 (2) Reference to “December 22, 1998” in sections 280.21(a) and 280.22(d) is replaced
8 with “July 1, 2007.”

9 (3) Reference to “subpart F” in section 280.21(a)(3) is replaced with “IDAPA
10 58.01.02.852 and 40 CFR 280.67.”

11 (4) Reference to “May 8, 1986” in section 280.22(a) is replaced with “July 1, 2007.”

12 (5) Reference to “in the form prescribed in appendix I of this part, a notice of existence
13 of such tank system to the state or local agency or department designated in appendix
14 II of this part to received such notice” in section 280.22(a) is replaced with “in the
15 form prescribed by the department, a notice of existence of such tank system to the
16 department.”

17 (6) Reference to “the notification form contained in appendix I of this part” in the note to
18 section 280.22(a) is replaced with “the form provided by the department.”

19 (7) Reference to “the appropriate agencies or departments identified in appendix II of this
20 part” in section 280.22(c) is replaced with “to the department.”

21 (8) Reference to “October 24, 1988” in section 280.22(g) is replaced with “July 1, 2007.”
22

23 **39-8806. GENERAL OPERATING REQUIREMENTS.** 40 CFR part 280, subpart
24 C is herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006,
25 including any notes therein, except as provided below.

26 (1) Reference to “(280.50)” in section 280.34(a)(2) is replaced with “(IDAPA
27 58.01.02.851.01).”

28 (2) Reference to “(280.53)” in sections 280.30(b) and 280.34(a)(2) is replaced with
29 “(IDAPA 58.01.02.851.04).”

30 (3) Reference to “(280.61)” in section 280.34(a)(2) is replaced with “(IDAPA
31 58.01.02.852.01).”

32 (4) Reference to “(280.62)” in section 280.34(a)(3) is replaced with “(IDAPA
33 58.01.02.852.02).”

34 (5) Reference to “(280.63)” in section 280.34(a)(3) is replaced with “(IDAPA
35 58.01.02.852.03).”

36 (6) Reference to “(280.64)” in section 280.34(a)(3) is replaced with “(IDAPA
37 58.01.02.852.04).”

38 (7) Reference to “(280.65)” in section 280.34(a)(3) is replaced with “(IDAPA
39 58.01.02.852.05).”

40 (8) Reference to “(280.66)” in section 280.34(a)(3) is replaced with “(IDAPA
41 58.01.02.852.06).”
42

43 **39-8807. RELEASE DETECTION.** 40 CFR part 280, subpart D is herein
44 incorporated by reference as provided in 40 CFR, revised as of July 1, 2006, including
45 any notes therein, except as provided below.

- (1) Reference to “subpart E” in sections 280.40(b) and 280.43(b)(4) is replaced with “IDAPA 58.01.02.851.”
- (2) Reference to “the date shown in the following table” in section 280.40(a)(3) is replaced with “July 1, 2007.”
- (3) The table following section 280.40(a)(3) is excluded.
- (4) Reference to “December 22 of the year listed in the following table” in section 280.40(c) is replaced with “July 1, 2007.”
- (5) The table following section 280.40(c) is excluded.
- (6) Section 280.41(a)(1) is replaced with “UST systems that meet the performance standards in section 280.20 or section 280.21 may use tank tightness testing and the monthly inventory control requirements in section 280.43 (a) or (b) for ten (10) years after the tank is upgraded or installed. If tank tightness testing is chosen, then the testing shall be conducted at least every 5 years. Tank tightness testing must be conducted in accordance with section 280.43(c).”
- (7) Reference to “December 22, 1998” in section 280.42(a) is replaced with “July 1, 2007.”

39-8808. PUBLIC PARTICIPATION. 40 CFR 280.67 is herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006.

39-8809. OUT-OF-SERVICE UST SYSTEMS AND CLOSURE. 40 CFR part 280, subpart G is herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006, including any notes therein, except as provided below.

- (1) Reference to “subpart E” in section 280.70(a) is replaced with “IDAPA 58.01.02.851.”
- (2) Reference to “subpart F” in sections 280.70(a) and 280.72(b) is replaced with “IDAPA 58.01.02. 852 and 40 CFR 280.67.”
- (3) Reference to “December 22, 1988” in section 280.73 is replaced with “July 1, 2007.”

39-8810. FINANCIAL RESPONSIBILITY. 40 CFR part 280, subpart H is herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006, including any notes therein, except as provided below.

- (1) Section 280.91 is replaced with “Owners of petroleum underground storage tanks are required to comply with the requirements of this subpart by July 1, 2007.”
- (2) Reference to “280.53 or 280.61” in section 280.110(a)(1) is replaced with “IDAPA 58.01.02.851.04 or IDAPA 58.01.02.852.01.”
- (3) Reference to “subpart E” in section 280.112(a)(1)(ii) is replaced with “IDAPA 58.01.02.851.”
- (4) Reference to “subpart F” in sections 280.96(c), 280.98(b), 280.106(d), 280.106(e), 280.112(a)(1)(ii), and 280.112(b)(1) is replaced with “IDAPA 58.01.02. 852 and 40 CFR 280.67.”

39-8811. LENDER LIABILITY. 40 CFR part 280, subpart I is herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006, except as provided below.

- (1) Reference to “40 CFR part 280” in sections 280.200(a), 280.210(a)(2), 280.210(b)(2)(i)(B), 280.210(b)(3), 280.230(b)(1), and 280.230(b)(4), is replaced

1 with “40 CFR part 280, as incorporated by the Idaho Underground Storage Tank Act,
2 Chapter 88, Title 39, Idaho Code.”

- 3 (2) Reference to “and 280.50 of subpart E” in section 280.200(a) is replaced with “, as
4 incorporated by the Idaho Underground Storage Tank Act, Chapter 88, Title 39,
5 Idaho Code, and IDAPA 58.01.02.851.01.”
- 6 (3) Reference to “subsequent to the effective date of this subpart, December 6, 1995” in
7 section 280.210 is replaced with “subsequent to July 1, 2007.”
- 8 (4) Reference to “or applicable state requirements in those states that have been delegated
9 authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40
10 CFR part 281” is replaced with “and IDAPA 58.01.02.851 through IDAPA
11 58.01.02.852.”
- 12 (5) Reference to “December 6, 1995” in sections 280.210 and 280.230 is replaced with
13 “July 1, 2007.”
- 14 (6) Reference to “280.51 through 280.67” in sections 280.210(c), 280.220, 280.230(a),
15 and 280.230(b)(2) is replaced with “IDAPA 58.01.02.851 through IDAPA
16 58.01.02.852.”

17
18 **39-8812. ADDITIONAL NOTIFICATION REQUIREMENTS.** 42 U.S.C.
19 6991a(a)(1)-(4), (6), and 42 U.S.C. 6991a(c)-(d) (Pub.L. 89-272, title II, sec. 9002, as
20 added Pub.L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, and amended Pub.L. 99-499,
21 title II, sec. 205(b), Oct. 17, 1986; Pub.L. 109-58, title XV, sec. 1526(c), Aug. 8, 2005),
22 are herein incorporated by reference, except as provided below.

- 23 (1) Reference to “State or local agency or department designated pursuant to subsection
24 (b)(1) of this section” and “State or local agency” and “designated State or local
25 agency or department” in 42 U.S.C. 6991a(a) is replaced with “department of
26 environmental quality.”
- 27 (2) Reference to “The Administrator shall require each State that receives Federal funds
28 to carry out this subchapter to” in 42 U.S.C. 6991a(d) is replaced with “The
29 department of environmental quality shall.”
- 30 (3) For the purposes of this section, the term “Administrator” shall mean the
31 Administrator of the United States Environmental Protection Agency.

32
33 **39-8813. ADDITIONAL MEASURES TO PROTECT GROUND WATER**
34 **FROM CONTAMINATION.**

- 35 (1) For purposes of this section, the following definitions shall apply:
- 36 (a) “Existing” means a tank, piping, motor fuel dispensing system in place when a
37 new installation or replacement of a tank, piping, or motor fuel dispensing system
38 begins.
- 39 (b) “Installation of a new motor fuel dispenser system” means the installation of a
40 new motor fuel dispenser and the equipment necessary to connect the dispenser to
41 the underground storage tank system. This equipment may include flexible
42 connectors, risers, or other transitional components that are beneath the dispenser
43 and connect the dispenser to the piping. It does not mean the installation of a
44 motor fuel dispenser installed separately from the equipment needed to connect
45 the dispenser to the underground storage tank system.

- 1 (c) "Installer" means any person who installs a new or replacement underground
2 storage tank system.
- 3 (d) "Motor Fuel" means petroleum or a petroleum-based substance that is motor
4 gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, biodiesel, or any grade of
5 gasohol, and is typically used in the operation of a motor engine.
- 6 (e) "Person" has the same meaning given to it in 40 CFR 280.12
- 7 (f) "Piping" means a hollow cylinder or a tubular conduit constructed of non-earthen
8 materials that routinely contains and conveys regulated substances from the
9 tank(s) to the dispenser(s) or other end-use equipment. It does not mean vent,
10 vapor recovery, or fill lines that do not routinely contain regulated substances.
- 11 (g) "Replace" as it applies to underground storage tanks, piping, and motor fuel
12 dispenser systems, is defined as follows:
- 13 (i) Underground storage tank – Replace means to remove an existing tank and
14 install a new tank. New tanks shall meet the new tank standards in 40 CFR
15 280.20, regardless of whether the tank was ever used before.
- 16 (ii) Piping – Replace means to repair or otherwise remove more than five (5)
17 feet of piping associated with a single underground storage tank system
18 within a thirty (30) day period. This definition does not alter the requirement
19 in 40 CFR 280.33(c) to replace metal pipe sections and fittings that have
20 released product as a result of corrosion or other damage.
- 21 (iii) Motor fuel dispenser system – Replace means to remove an existing
22 dispenser and the equipment necessary to connect the dispenser to the
23 underground storage tank system and install a new dispenser and the
24 equipment necessary to connect the dispenser to the underground storage
25 tank system. For purposes of this definition, this equipment may include,
26 but is not limited to, flexible connectors, risers, or other transitional
27 components that are beneath the dispenser and connect the dispenser to the
28 piping.
- 29 (h) "Secondary containment" means a release detection and prevention system that
30 meets the requirements of 40 CFR 280.43(g) but shall not include under-
31 dispenser spill containment or control systems.
- 32 (i) "Under-dispenser spill containment" means containment underneath a dispenser
33 that will prevent leaks from the dispenser from reaching soil or groundwater.
34 Such containment must:
- 35 (i) Be liquid-tight on its sides, bottom, and at any penetrations;
36 (ii) Be compatible with the substance conveyed by the piping; and
37 (iii) Allow for visual inspection and access to the components in the containment
38 system.
- 39 (j) "Underground storage tank" has the same meaning given to it in 40 CFR 280.12,
40 except that such term does not include tank combinations or more than a single
41 underground pipe connected to a tank. This term does not include those tanks
42 identified in 40 CFR 280.10(b) and 280.10(c) as excluded or deferred
43 underground storage tanks.
- 44 (2) Beginning July 1, 2007, an installer must:

- 1 (a) Provide written notice to the department thirty (30) days prior to the installation
2 of a new underground storage tank, replacement underground storage tank, or a
3 new piping system.
- 4 (b) Provide written notice to the department prior to replacing piping.
- 5 (3) The written notice required in subsection (2) of this section shall be made upon forms
6 provided by the department.
- 7 (4) Beginning July 1, 2007, owners and operators of a new or replacement underground
8 storage tank or piping system shall comply with either subsection (4)(a) or (4)(b) of
9 this section. The notice required in subsection (2) of this section shall identify which
10 subsection owners and operators will comply with.
- 11 (a) Tank and piping secondary containment:
- 12 (i) The owner and operator shall install secondary containment and monitor for
13 leaks pursuant to 40 CFR part, 280 subpart D.
- 14 (ii) In the case of a new underground storage tank system consisting of one (1)
15 or more underground storage tanks and connected by piping, subsection
16 (4)(a) of this section shall apply to all underground storage tanks and
17 connected pipes comprising such system.
- 18 (iii) In the case of a replacement of an existing underground storage tank or
19 existing piping connected to the underground storage tank, subsection (4)(a)
20 of this section shall apply only to the specific underground storage tank or
21 piping being replaced, not to other underground storage tanks and connected
22 pipes comprising such system.
- 23 (iv) Each installation of a new or replacement motor fuel dispenser system, after
24 July 1, 2007, shall include under-dispenser spill containment.
- 25 (b) Evidence of financial responsibility
- 26 (i) Manufacturers of underground storage tanks and piping for underground
27 storage tank systems and installers of underground storage tank systems
28 shall maintain evidence of financial responsibility under 42 U.S.C. 6991b(d)
29 and 40 CFR 280.94 to 280.103 in order to provide for the costs of corrective
30 actions directly related to releases caused by improper manufacture or
31 installation.
- 32 (ii) The amount and scope of coverage shall be at a minimum \$1 million dollars
33 per occurrence and \$2 million dollars annual aggregate for manufacturers to
34 cover the costs of corrective action of a release from a regulated
35 underground storage tank caused by improper manufacture. The amount
36 and scope of coverage shall be at a minimum \$1 million dollars per
37 occurrence and \$2 million dollars annual aggregate for installers to cover the
38 costs of corrective action of release from a regulated system due to improper
39 installation. These limits do not include legal defense costs.
- 40 (iii) Manufacturers and installers shall maintain evidence of financial
41 responsibility for as long as their existing components are still in service.
- 42 (iv) The mechanism of financial responsibility must require that the provider
43 notify the department and the insured of cancellation or nonrenewal of the
44 mechanism thirty (30) days prior to the cancellation or nonrenewal.
- 45 (v) Manufacturers and installers shall provide evidence of financial
46 responsibility to owners and operators prior to installation. Manufacturers

1 and installers shall provide annual updates to owners and operators
2 evidencing continued financial responsibility. Owners and operators of the
3 underground storage tank systems shall maintain evidence of financial
4 responsibility at the facility where the underground storage tank system is
5 located. Evidence of financial responsibility shall be provided to the
6 department with the notice required by subsection (2) of this section and
7 shall be made available upon request of the department.

- 8 (vi) If the manufacturer or installer files for bankruptcy or ceases operation for
9 any other reason, the manufacturer or installer shall provide notice to the
10 owner and operator and the department within five (5) days of filing for
11 bankruptcy or ceasing operations.

12 (5) Owners and operators shall also comply with the certification requirements of 40
13 CFR 280.22(f) as adopted by this chapter.

14 (6) Nothing in this section alters or affects the liability of any owner or operator of an
15 underground storage tank.
16

17 **39-8814. OPERATOR TRAINING REQUIREMENTS.**

18 (1) The department shall develop a training program to help owners and operators
19 comply with the requirements of this chapter. The training program shall:

- 20 (a) Be consistent with 42 U.S.C. 6991i(a), as amended by the Underground Storage
21 Tank Compliance Act, (Pub.L. 109-58, title XV, sec. 1524(a), Aug. 8, 2005);
22 (b) Be developed in cooperation with tank owners and tank operators;
23 (c) Take into consideration training programs implemented by tank owners and tank
24 operators as of August 8, 2005; and
25 (d) Be appropriately communicated to tank owners and operators.

26 (2) For each underground storage tank system regulated under this chapter, the owner or
27 operator shall:

28 (a) Designate:

- 29 (i) The person(s) having primary responsibility for on-site operation and
30 maintenance of the underground storage tank system;
31 (ii) The person(s) having daily on-site responsibility for the operation and
32 maintenance of the underground storage tank system; and
33 (iii) The daily, on-site employee(s) having primary responsibility for addressing
34 emergencies presented by a spill or release from the underground storage
35 tank system.

36 (b) Maintain a record at the facility where the underground storage tank is located
37 listing each person designated in subsections (2)(a)(i) and (ii) of this section.

38 (c) Notify the department in writing of the persons designated in subsections (2)(a)(i)
39 and (ii) of this section.

40 (3) The owner or operator of each underground storage tank system regulated under this
41 chapter shall ensure that the person(s) identified in subsection (2)(a)(i) and (2)(a)(ii)
42 of this section participate in the training conducted by the department. The person(s)
43 identified in (2)(a)(i) or (2)(a)(ii) shall provide training to the persons identified in
44 (2)(a)(iii). The person identified in subsection (2)(a)(i) and (2)(a)(ii) of this section
45 shall repeat the training if the underground storage tank system for which they have
46 responsibility is determined to be out of compliance with this chapter.

1
2 **39-8815. DELIVERY PROHIBITION.**

3 (1) For purposes of this section, the following definitions shall apply:

4 (a) "Product deliverer" means any person, as person is defined in 40 CFR 280.12,
5 who delivers or deposits product into an underground storage tank. This term
6 may include major oil companies, jobbers, petroleum transportation companies, or
7 other product delivery entities.

8 (b) "Red tag" means a tag, device, or mechanism on the tank's fill pipes that clearly
9 identifies an underground storage tank as ineligible for product delivery. The tag
10 or device shall be visible to the product deliverer and shall clearly state that it is
11 unlawful to deliver to, deposit into, or accept product into the ineligible
12 underground storage tank.

13 (2) Effective August 8, 2007, it shall be unlawful for any person to deliver to, deposit
14 into, or accept a regulated substance into an underground storage tank at a facility
15 which has been identified by the department to be ineligible for such delivery,
16 deposit, or acceptance.

17 (3) The department shall classify an underground storage tank as ineligible for delivery,
18 deposit, or acceptance of a regulated substance as soon as practicable after the
19 department determines an underground storage tank meets one or more of the
20 following conditions:

- 21 (a) Required spill prevention equipment is not installed;
22 (b) Required overfill protection equipment is not installed;
23 (c) Required leak detection equipment is not installed; or
24 (d) Required corrosion protection equipment is not installed.

25 (4) The department may classify an underground storage tank as ineligible for delivery,
26 deposit, or acceptance of a regulated substance if the owner or operator of the tank
27 has been issued a written warning for the following violations, and the owner or
28 operator fails to take corrective action within thirty (30) days of the issuance of the
29 warning letter, unless the deadline is extended by the department:

- 30 (a) Failure to properly operate or maintain leak detection equipment;
31 (b) Failure to properly operate or maintain spill, overfill, or corrosion protection
32 equipment;
33 (c) Failure to maintain financial responsibility;
34 (d) Failure to have corrosion protection equipment on a buried metal flexible
35 connector; or
36 (e) Other violations deemed appropriate by the department.

37 (5) If the department classifies an underground storage tank as ineligible for delivery,
38 deposit, or acceptance of a regulated substance pursuant to subsections (3) or (4) of
39 this section, the department shall provide a written notice of the determination to the
40 owner or operator. Notice is considered properly served by the department in any of
41 the following ways:

- 42 (a) The notice is personally delivered to the owner or operator, or if the owner or
43 operator is not available, to an employee of the owner or operator; or
44 (b) The notice is clearly posted at a public entrance to the facility where the
45 underground storage tank is located and a copy of the notice is also sent by first
46 class mail to the last known address of the owner or operator.

- 1 (6) Proof of service is considered complete when the person delivering the notice signs a
2 certificate stating that notice has been served or posted in accordance with subsection
3 (5)(a) or (5)(b) of this section.
- 4 (7) Once service of the written notice of the ineligible determination is complete, the
5 department shall then attach a red tag to each fill pipe of the ineligible underground
6 storage tank clearly identifying the tank as ineligible. The department shall also
7 maintain a list of all underground storage tanks that are classified as ineligible for
8 delivery, deposit, or acceptance of a regulated substance. The department shall make
9 the list available to the public by posting the list on the department's website.
- 10 (8) The written notice required by subsection (5) of this section must include:
11 (a) The specific reasons or violations that led to the ineligible classification.
12 (b) A statement notifying the owner and operator that the underground storage tank is
13 ineligible for delivery and it is unlawful for any person to deliver to, deposit into,
14 or accept a regulated substance into the underground storage tank.
15 (c) The name and address of the department representative to whom a written request
16 for re-inspection can be made, if a re-inspection is necessary.
17 (d) The following statement regarding the right to appeal the classification: "You
18 have the right to request in writing a compliance conference with the department
19 within fifteen (15) days of the receipt of this notice. You may also appeal the
20 ineligible classification to the board of environmental quality by filing a written
21 petition to initiate a contested case as provided in IDAPA 58.01.23, "Rules of
22 Administrative Procedure Before the Board of Environmental Quality," within
23 fifteen (15) days of the receipt of this notice or, if a timely request is made for a
24 compliance conference and the matter is not resolved in the compliance
25 conference, within five (5) working days following the conclusion of the
26 compliance conference."
- 27 (9) If the owner or operator requests in writing a compliance conference with the
28 department within fifteen (15) days of receipt of the notice, a compliance conference
29 shall be scheduled within twenty (20) days and conducted in an informal manner by
30 the department. At the compliance conference, the owner or operator may explain
31 why he believes the underground storage tank should not be classified as ineligible.
- 32 (10) The owner or operator may appeal to the board of environmental quality within
33 fifteen (15) days of receipt of the notice or, if a timely request for a compliance
34 conference was made, within five (5) working days following the completion of the
35 compliance conference. The appeal must be in writing following the contested case
36 procedures in IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board
37 of Environmental Quality."
- 38 (11) The classification of an underground storage tank as ineligible shall remain in
39 effect until the conditions cited in the notice no longer exist. If the department
40 determines that an ineligible storage tank has returned to compliance and is now
41 eligible for delivery, deposit, or acceptance of a regulated substance, the department
42 shall, as soon as practicable, remove the red tag from the underground storage tank
43 and also remove the underground storage tank from the ineligible list posted on its
44 website.
- 45 (12) The director may decline to classify an underground storage tank as ineligible if
46 the director decides that classifying the underground storage tank as ineligible for

1 delivery, deposit, or acceptance is not in the best interest of the public. The director
2 may only defer application of delivery prohibition for up to one hundred eighty (180)
3 days after determining an underground storage tank is ineligible for delivery, deposit,
4 or acceptance of a regulated substance. The director may authorize the delivery,
5 deposit, or acceptance of product into an ineligible underground storage tank if such
6 activity is necessary to test or calibrate the underground storage tank or dispenser
7 system.

8 (13) Nothing in this section shall affect or preempt the authority of the department to
9 prohibit the delivery, deposit, or acceptance of a regulated substance to an
10 underground storage tank under other existing authorities.

11 (14) A person shall not be in violation of subsection (2) of this section if the
12 department fails to provide the notice of ineligibility pursuant to subsections (5)
13 through (7) of this of this section.
14

15 **39-8816. INSPECTION, MONITORING, TESTING, AND CORRECTIVE**
16 **ACTION.**

17 (1) For the purposes of developing or assisting in the development of any regulation,
18 conducting any study, taking any corrective action, or enforcing the provisions of this
19 chapter, any owner or operator of an underground storage tank shall, upon request of
20 any officer, employee or representative of the department, furnish information
21 relating to such tanks, their associated equipment, and their contents; conduct
22 monitoring or testing; permit such officer at all reasonable times to have access to,
23 and to copy all records relating to, such tanks; and permit such officer to have access
24 for corrective action. For the purposes of developing or assisting in the development
25 of any regulation, conducting any study, taking corrective action, or enforcing the
26 provisions of this chapter, such officers, employees, or representatives are authorized:

- 27 (a) To enter at reasonable times any establishment or other place where an
28 underground storage tank is located in accordance with the provisions of section
29 39-108(2), Idaho Code;
30 (b) To inspect and obtain samples from any person of any regulated substances
31 contained in such tank;
32 (c) To conduct monitoring or testing of the tanks, associated equipment, contents, or
33 surrounding soils, air, surface water or ground water; and
34 (d) To take corrective action.

35 (2) Any records, reports, or information obtained from any persons under this section
36 shall be available to the public, except as provided by the Idaho Public Records Law,
37 sections 9-337 through 9-350, Idaho Code.

38 (3) In the case of underground storage tanks regulated under this chapter that have not
39 undergone an inspection by the department or the united states environmental
40 protection agency since December 22, 1998, the department shall conduct on-site
41 inspections of all such tanks to determine compliance with this chapter not later than
42 August 8, 2007.

43 (4) After completion of all inspections required under subsection (3) of this section, the
44 department shall conduct on-site inspections of each underground storage tank
45 regulated under this chapter at least once every three (3) years to determine
46 compliance with this chapter.

1 (5) Nothing in this section shall be construed to diminish the department's authorities
2 under subsection (1) of this section.
3

4 **39-8817. ENFORCEMENT.**

5 (1) Failure to comply with any requirement of this chapter shall be unlawful. Sections
6 39-108, 39-109, 39-116, 39-116A, and 39-117, Idaho Code, shall be applicable to this
7 chapter and the director may use these sections to ensure compliance with this
8 chapter.

9 (2) Any person who knowingly makes any false statement or representation in any
10 certification, notification, record, report, or other document filed, maintained or used
11 for the purpose of complying with the provisions of this chapter shall be guilty of a
12 misdemeanor and subject to a fine of not more than ten thousand dollars (\$10,000)
13 or to imprisonment not to exceed one (1) year, or to both, for each separate violation
14 or for each day of a continuing violation.

15 (3) Any person who willfully tampers with or destroys a red tag that has been attached
16 pursuant to section 39-8815, Idaho Code, shall be guilty of a misdemeanor and
17 subject to a fine of not more than ten thousand dollars (\$10,000) or to imprisonment
18 not to exceed one (1) year, or to both, for each separate violation.